

NTIC National Training and Information Center

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April 5, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW
Washington DC 20219

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington DC 20429

Regulation Comments, Attention: No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington DC 20552

Dear Officials of Federal Bank and Thrift Agencies:

On behalf of the National Training and Information Center (NTIC), we are pleased that the federal banking regulators have finally acted on the important issue of CRA modernization. We agree with your proposal stating that the CRA needs to keep pace with the changing face of financial industries. Your proposal makes small steps to get us in that direction, but it unfortunately it does not go far enough.

Since working to pass the Community Reinvestment Act (CRA), NTIC has used CRA as a very important tool to improve low and-moderate income neighborhoods. NTIC has worked with banks to get agreements to serve the particular needs of their neighborhoods. We have been instrumental in working with banks throughout the country to recognize that investment in low and moderate neighborhoods is a good investment. In fact, Kenneth H. Thomas, Ph.D., a noted CRA scholar wrote, "The National Training and Information Center has been involved with the largest number of CRA challenges and agreements" (Community Reinvestment Performance, p. 14). In Chicago, NTIC still sits on several bank review boards as part of CRA agreements that were negotiated in 1984.

The small steps that NTIC applauds are in regards to data requirements. The change of displaying loan purchase and loan originations in the public's display of loan data is a good step.

Community groups that NTIC works with typically request public evaluations and HMDA directly from banks. Enhancing the quality of the data will help community groups work with banks to serve their credit needs.

NTIC commends the regulators on enhancing the data requirements for small business and rural lending. NTIC has talked to the regulators for many years about this. Community organizations that we have worked with throughout the country have long complained about the incomplete picture of small business lending compared to mortgage lending. The same data that is available for mortgage lending should also be available for small business.

It seems that the regulators have simply ignored the community concerns in favor of "flexibility" in regulation. We are glad the regulators have moved to downgrade a bank's CRA performance if they are found guilty of predatory lending. The problem is in the way that the regulators define predatory lending. The regulators have ignored the fact that the subsidiaries are the real predatory lenders. The regulations basically are a warning that says that if you want to keep taking advantage of people with predatory loans, do it through your subsidiary and be careful not to have that company's lending counted as part of your CRA record. If you do that, you can do anything you want with impunity.

NTIC is also concerned with the lack of guidance for banks with regards to discriminatory lending. The "clarification" that evidence of discrimination "may" harm your CRA rating is not specific enough. The regulators still don't say what counts as evidence. NTIC presented the case of Flagstar, which had been found liable for discrimination in a trial. There was no punishment. After that, this past year, Flagstar was found liable again. This time it was not a local issue in Detroit, but a class action lawsuit for the whole nation that found that they intentionally, and in a written policy, allowed their agents to charge more points to one race than to others. The judge found them liable without even a trial (in what is called summary judgment). It doesn't get much more blatant than this. Still, they have not been punished in regard to CRA. So, the question remains as to how extreme a bank's discrimination has to be before you get punished with regards to the CRA. If Flagstar does not get an unsatisfactory rating, then the whole issue of taking account of discrimination through CRA exams does not happen.

We have also concerns with allowing more banks to qualify under the small bank exam. We believe that every bank should qualify for the toughest exam possible. Allowing more banks to qualify for the easiest test does not serve the aim of the Community Reinvestment Act. It serves the bigger banks getting away with being less accountable to the CRA.

As you know, NTIC had focused on four recommendations to modernize the CRA. Over the past two years, we have released two reports and met with the regulators to discuss the importance of these recommendations. These are:

- Require all non-bank affiliates of bank holding companies that engage in lending to be covered under the CRA. Under the current CRA, institutions have the option to count affiliate activity in or out of their CRA exam. This leads to a financial institution's potential to manipulate its CRA rating. Currently, a financial institution can own a predatory lender and use those loans to enhance its CRA rating.
- Require an analysis of race based lending as a component in the "lending test" for CRA compliance. If disparities exist (with income held constant for example) the bank would receive an automatic "needs to improve" CRA rating.
- Require interest rate, fees and credit scores to be reported separately in HMDA. HMDA needs to include this information to give regulators and community groups accurate information about the quality of loans made in low and moderate-income neighborhoods.
- Develop ways to fight grade inflation.

We were disappointed that more of our specific recommendations were not included in this proposal.

Sincerely,

Joseph W. Mariano
Executive Director

Brenda LaBlanc
NTIC Board Member